

1 COOLEY LLP
2 MATTHEW D. BROWN (Cal. Bar No. 196972)
(brownmd@cooley.com) (*admitted pro hac vice*)
3 AMY M. SMITH (Cal. Bar No. 287813)
(amsmith@cooley.com) (*admitted pro hac vice*)
4 101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
5 Facsimile: (415) 693-2222

6 CHRISTOPHER B. DURBIN (WSBA No. 41159)
(cdurbin@cooley.com)
7 1700 Seventh Avenue
Suite 1900
8 Seattle, WA 98101-1355
Telephone: (206) 452-8700
9 Facsimile: (206) 452-8800

10 Attorneys for Defendant
11 KROMTECH ALLIANCE CORPORATION

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 RIVER CITY MEDIA, LLC, a
15 Wyoming limited liability company,
16 MARK FERRIS, an individual,
17 MATT FERRIS, an individual, and
18 AMBER PAUL, an individual,

19 Plaintiffs,

20 v.

21 KROMTECH ALLIANCE
22 CORPORATION, a German
corporation, CHRIS VICKERY, an
23 individual, CXO MEDIA, INC., a
Massachusetts corporation,
24 INTERNATIONAL DATA
GROUP, a Massachusetts
corporation, and STEVE RAGAN,
an individual, and DOES 1-50,

25 Defendants.

Case No. 2:17-cv-00105-SAB

**DECLARATION OF AMY M. SMITH IN
SUPPORT OF DEFENDANT KROMTECH
ALLIANCE CORPORATION'S
OPPOSITION TO PLAINTIFFS' MOTION
TO EXPEDITE MOTION TO EXTEND
AMENDED PLEADINGS DEADLINE AND
PLAINTIFFS' MOTION TO EXTEND
AMENDED PLEADINGS DEADLINE**

Date: February 15, 2018

Time: 1:30 p.m.

Courtroom: 203

Judge: The Hon. Stanley A. Bastian

Trial: July 15, 2019

1 I, Amy M. Smith, hereby declare as follows:

2 1. I am an associate with the law firm of Cooley LLP, counsel for
3 Defendant Kromtech Alliance Corporation (“Kromtech”) in the above-captioned
4 matter. I submit this declaration in support of Kromtech’s Opposition to Plaintiffs’
5 Motion to Expedite Motion to Extend Amended Pleadings Deadline and Plaintiffs’
6 Motion to Extend Amended Pleadings Deadline. I have personal knowledge of the
7 facts set forth in this declaration, and if called to testify, I could and would testify
8 competently to the matters stated herein.

9 2. On August 28, 2017, the Court denied the motions to dismiss filed by
10 Kromtech, International Data Group, Inc. (“IDG”), and CXO Media Inc. (“CXO”)
11 with leave to renew, directing the parties to “meet and confer and submit to the Court
12 proposed deadlines for completing jurisdictional discovery and for Plaintiffs to file
13 their Amended Complaint.” (ECF No. 60 at 13.) Plaintiffs never sought to meet and
14 confer with Kromtech about the scope of discovery or proposed deadlines. More
15 than two months passed before Kromtech heard anything from Plaintiffs, when
16 Plaintiffs served their First Requests for Admission and First Set of Interrogatories
17 and Requests for Production of Documents on Kromtech on October 30, 2017.

18 3. Plaintiffs’ broad document requests implicated Kromtech’s confidential
19 and sensitive business information. As a result, Kromtech—along with IDG, CXO,
20 and Steve Ragan—sought to enter an agreement concerning the parties’ treatment of
21 confidential information. At the parties’ November 15, 2017 conference, Plaintiffs
22 agreed to consider reaching an agreement on the parties’ treatment of confidential
23 information prior to any production. During that conference, Kromtech, CXO, IDG,
24 and Plaintiffs also agreed to propose January 31, 2018 as the deadline to complete
25 jurisdictional discovery, and February 14, 2018 as the deadline for Plaintiffs to
26 amend their complaint.

27 4. On November 28, 2017, the Court held a telephonic scheduling
28 conference and the parties confirmed that those deadlines were acceptable. The

1 Court entered deadlines in the scheduling order later that same day. Also that same
2 day, counsel for IDG, CXO, and Ragan emailed all parties a draft of a proposed
3 confidentiality agreement. To my knowledge, Plaintiffs never responded to this
4 email and never provided any revisions or comments to this draft agreement for
5 Kromtech's consideration.

6 5. Kromtech served its Responses and Objections to Plaintiffs' First
7 Requests for Admission and First Set of Interrogatories and Requests for Production
8 of Documents on December 5, 2017. In its responses to Plaintiffs' Requests for
9 Production, Kromtech agreed that it would conduct a reasonable search and produce
10 responsive, non-privileged information in response to Plaintiffs' requests that came
11 within the scope of the Court's August 28, 2017 order on jurisdictional
12 discovery. Kromtech also stated that it would produce private, business confidential,
13 proprietary, commercially sensitive, or personal information only after an agreement
14 regarding confidentiality was entered into by the parties. At this point, Kromtech
15 was still awaiting Plaintiffs' edits or comments to the draft confidentiality agreement
16 sent on November 28, 2017. Plaintiffs had given no indication that they were no
17 longer willing to consider such an agreement. On December 11, 2017, I emailed all
18 parties to ask if there was agreement on the draft confidentiality agreement, and if
19 not, whether anyone had any edits or comments. Plaintiffs never responded to my
20 email.

21 6. On December 21, 2017, Plaintiffs sent a meet-and-confer letter to
22 Kromtech concerning purported "deficiencies" in Kromtech's discovery
23 responses. Kromtech had not yet produced any documents because its collection and
24 review efforts were still ongoing, so Plaintiffs' letter concerned Kromtech's
25 objections and responses to Plaintiffs' discovery requests. On January 4, 2018,
26 Kromtech sent a reply meet-and-confer letter to Plaintiffs in which it explained that
27 Plaintiffs had mischaracterized Kromtech's objections and responses, and Kromtech
28 had proposed that the parties enter a confidentiality agreement, not a protective order

1 to be signed by the Court. Kromtech also confirmed again (consistent with its
2 responses served on December 5, 2017), that it would not withhold any responsive,
3 non-privileged information that came within the scope of the Court's August 28,
4 2017 order. Kromtech also requested again that Plaintiffs provide edits to the
5 proposed agreement concerning the parties' treatment of confidential material,
6 circulated on November 28, 2017. Finally, Kromtech asked Plaintiffs' counsel to
7 provide several dates and times on which they would be available for a teleconference
8 if Plaintiffs wished to discuss Kromtech's discovery responses further. Plaintiffs'
9 counsel did not respond.

10 7. In their Motion to Extend, Plaintiffs stated that in the latter weeks of
11 December 2017 "the *parties* conferred about, negotiated, prepared for, and conducted
12 the deposition of Plaintiff Matthew Ferris." (ECF No. 81 at 2 (emphasis added).)
13 However, for clarity, there were no meet-and-confer discussions between Plaintiffs
14 and Kromtech, apart from exchanging letters on December 21, 2017 and January 4,
15 2018, and Kromtech was not involved in any negotiations with Plaintiffs about any
16 depositions.

17 8. On January 31, 2018, Kromtech produced 1,545 documents (3,985
18 pages) in response to Plaintiffs' First Requests for Production. Kromtech did not
19 withhold any documents due to the absence of an existing agreement on the parties'
20 treatment of confidential material.

21 9. On February 7, 2018, a week before the deadline to move to amend the
22 complaint, counsel for Plaintiffs asked all defendants to sign a proposed stipulation
23 that would give Plaintiffs an additional 30 days to move to amend. Counsel for CXO
24 and Plaintiffs quickly began a debate over email, and apparently continued their
25 discussion in a teleconference the next day, without Kromtech. (See ECF No. 79 at
26 3.) Kromtech never agreed to Plaintiffs' request for an extension, and I am not aware
27 that any other parties agreed to Plaintiffs' request. On February 9, 2018, Plaintiffs
28 filed the Motion to Extend, citing their discovery dispute with CXO to justify their

1 request for an extension of the deadline to move to amend the complaint, as well as
2 “the fact discovery, expert, and dispositive motion deadlines in this matter.” (ECF
3 No. 81 at 4.) The same day, Plaintiffs filed the Motion to Expedite. Plaintiffs did
4 not meet-and-confer with Kromtech concerning the Motion to Expedite.

5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct. Executed this 12th day of February, 2018, in San
7 Francisco, California.

8
9 
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Amy M. Smith

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this February 12, 2018, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF System which will send
4 notification of such filing to the following:
5

6 Leeor Neta Attorneys for Plaintiffs
7 Newman Du Wors LLP
8 505 Montgomery Street, 11th Fl.
9 San Francisco, CA 94111-2585
Email: leeor@newmanlaw.com

10 Jason E. Bernstein Attorneys for Plaintiffs
11 Newman Du Wors LLP
12 2101 Fourth Avenue, Ste. 1500
13 Seattle, WA 98121
Email: jake@newmanlaw.com

14 Charles L. Babcock Attorneys for Defendants
15 William J. Stowe International Data Group, Inc.,
16 Jackson Walker LLP CXO Media, Inc. and Steve Ragan
17 1401 McKinney St., Ste. 1900
18 Houston, TX 77010
Email: cbabcock@jw.com
wstowe@jw.com

19 Kevin J. Curtis Attorneys for Defendants
20 WINSTON & CASHATT, International Data Group, Inc.,
21 601 W. Riverside, Ste. 1900 CXO Media, Inc. and Steve Ragan
22 Spokane, WA 99201
Email: kjc@winstoncashatt.com

23 Edward C. Chung Attorneys for Defendant
24 CHUNG, MALHAS & Chris Vickery
25 MANTEL, PLLC
26 1511 Third Avenue, Suite #1088
27 Seattle, WA 98101
Email: echung@cmmlawfirm.com;
28 Litigation@cmmlawfirm.com

1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct to the best of my belief.

3 Signed and dated this 12th day of February, 2018, in Seattle, Washington.
4

5
6 /s/ Christopher Durbin

7 Christopher Durbin
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

166207087